**IN THE HIGH COURT OF UTTARANCHAL**
**AT NAINITAL**

A.O. No. 163/2005
(Old No. 1132/2000)

1- Smt. Nusarat Jahan, W/o Late Abid Ali
R/o C/o Imran Jafar, Mohalla Katoratal,
Tehsil Kashipur, District U.S. Nagar.

2- Km. Lubana Abid D/o late Abid Ali
R/o C/o Imran Jafar, Mohalla Katoratal,
Tehsil Kashipur, District U.S. Nagar.

3- Fahad Khan, minor son of Late Abid Ali,
4- Km. Fatima Abid, minor daughter of Late Abid Ali,
Both are under the guardianship of their Natural guardian their mother Smt. Nusarat Jahan W/o late Abid Ali
R/o C/o Imran Jafar, Mohalla Katoratal,
Tehsil Kashipur,
District U.S. Nagar ..claimants/appellants.

Versus

1- Mansoor Ali S/o Irshad Ali,
R/o 149, Old Mughalpura, Moradabad

2- The Divisional Manager, The New India Insurance Company Ltd., Bazpur Road Kashipur,
District U.S.Nagar ..Opp.Parties/Respondents.

Sri Manav Sharma learned counsel for the appellants.
Sri R.B. Agarwal, learned counsel for the Insurance Company.

**Hon'ble P.C. Verma, J.**
**Hon'ble B.C. Kandpal, J.**

Dated: 15-06-2006

The present appeal U/S 173 of the Motor Vehicles Act, 1988 has been preferred against the judgment and award dated 20-5-2000, passed by MACT/Addl. District Judge, Udham Singh Nagar, in MACP No. 117 of 1999 Smt. Nusarat Jahan and others Vs. Mansoor Ali and another, whereby the claimant were awarded Rs. Four lacs as compensation along with 8% per

annum interest, payable by the New India Insurance Company.

2- Briefly stated the facts of the case are that deceased Abid Ali was posted at Ramnagar, as Electric Technician in U.P. Electricity Board. On 6-5-1999 Abid Ali was coming to Kashipur from Chilkiya-Ramnagar on the scooter of Sri Surendra Nath Shukla, Assistant Engineer as pillion rider. In the way the cap of Abid Ali blown in the air whereupon he asked the Assistant Engineer to stop the scooter and he stopped the scooter. As soon as Abid Ali went to collect his cap from the road, suddenly Bus bearing registration No. U.G.O. 9022 came there at a high speed and crushed Abid Ali, due to which Abid Ali died instantaneously. The deceased Abid Ali at the time of accident was 42 years of age and was getting salary of Rs. 9556/- per month. The claimants/appellants are the widow and children of the deceased. They have filed the claim petition to award compensation of Rs. Fifteen lacs.

3- The Opp.party/respondent Mansoor Ali inspite of service did not contest the claim petition, hence the claim petition was heard exparte against him.

4- The Opp.Party/insurer New India Insurance Company filed its W.S. The Insurance Company alleged that the claimants and the owner have strict liability to prove that the offending bus was having valid registration, insurance, permit and fitness and it was being driving by the driver having valid driving licence. It was also alleged that the insurance company is not liable to pay any compensation.

5- On the pleadings of parities, the Tribunal framed relevant issues. The claimants filed copy of post mortem report of deceased Abid Ali, copy of F.I.R., copy of insurance policy, driving licence etc. They also

produced P.W.1 Smt. Nurasat Jahan, and P.W.2 S.N. Shukla. However, the Insurance Company did not adduce any evidence in support its contentions.

6- The Tribunal on hearing learned counsel for the parties and perusing the material on record, allowed the claim petition and awarded Rs. Four lacs as compensation along with 8% per annum interest against the Insurance Company.

7- Being dissatisfied with the compensation amount, the claimants have filed this appeal for enhancement of the compensation.

8- We have heard learned counsel for the parties and perused the record.

9- The submission raised by the learned counsel for the appellants is that the Tribunal has committed an error by applying the multiplier of 10 as the same should have been 15. It is also submitted that the Tribunal has also erred in making deduction towards pensionary benefits, provident fund, L.T.C, etc. It is further submitted that the Tribunal has not taken into consideration the future increase of the salary of the deceased. It is also submitted that the rate of interest indicated in the impugned judgment and award is also very less.

10- The record reveals that the deceased was working as an Electric Technician in the department of U.P. Electricity Board, Ramnagar, thereby getting the salary of Rs. 9,556/- per month. The salary certificate has been filed by the claimants before the Tribunal and the respondents could not file any document in rebuttal of the same. Therefore, it is established that the deceased was getting a total gross salary of Rs. 9,556/- per month at the time of his death.

11- As far as the age of the deceased is concerned, the claim petition shows that the deceased was 42 years of

the age at the time of his death. But there is no evidence available on record which may indicate the correct date of birth of the deceased. The claimants have not filed any certificate disclosing the date of birth of the deceased by which the actual date of birth of the deceased could have been ascertained. The only evidence available on the record is the post mortem report of the deceased which indicates that the deceased was about 47 years of age at the time of his death and we have no other evidence available on the record to observe that the deceased was less than 47 years of age at the time of his death. Therefore the age of deceased at the time of his death is assessed as 47 years.

12- It has come in the evidence that after the death of Abid Ali, his wife is entitled to get the family pension. Apart of this she will also get other funds like gratuity etc. Therefore under the aforesaid circumstances it has been rightly held by the Tribunal that for the purpose of awarding the compensation, the monthly income of deceased should be assessed as Rs. 5000/- per month.

13- Had the deceased been alive then he would have also invested 1/3rd amount out of the aforesaid amount against his personal expenses.

14- The Tribunal has adopted a multiplier of 10 keeping in view the age of the deceased as 47 years. The learned counsel for the appellants has vehemently stressed on this point that he multiplier in any case should have been on the higher side keeping in view the age of the deceased. But we are not inclined to accept the argument advanced by the learned counsel for the appellants. The Hon'ble Supreme Court in the case of **Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and two others** reported in **JT**

**2005(4) SC 531** has adopted the multiplier of 12 where the age of the deceased was 38 years and he was in the Government job, therefore the multiplier of 10, as has been adopted by the Tribunal in the instant case appears to be quite just and appropriate. As the Insurance Company has not challenged the quantum of compensation, therefore, we are not inclined to adopt the multiplier lesser than the multiplier adopted by the Tribunal. We, therefore, hold that the multiplier adopted by the Tribunal does not require any interference in this appeal.

15- Having considered the entire evidence on record, we are of the view that the claimants are entitled for compensation as under:

Rs. 5000/- X 12= Rs. 60,000/- X 10 =Rs.6,00,000/- (-) Rs. 2,00,000/- (1/3rd amount towards personal expenses) = Rs. 4,00,000/-.

16- As far as the rate of interest indicated in the impugned judgment and award is concerned, the same does not require any interference.

17- On the basis of the assessment of evidence on record, we come to the conclusion that the appeal lacks merit and is liable to be dismissed.

18- Accordingly the appeal is dismissed. The judgment and award dated 20-5-2000, passed by MACT/Addl. District Judge, U.S. Nagar, is hereby confirmed. No order as costs.

**(B.C. Kandpal, J.)** **(P.C. Verma, J.)**

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